Supreme Court, U.S.
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No. ____

In The
Supreme Court of the United States

SANDY LATIMER, individually and as surviving spouse of ROY LATIMER, deceased; LEE LATIMER; KRISTI LATIMER; DAWN LATIMER; ALLISON STOPKE, as parent and natural guardian of KIP STOPKE, a minor; and JULIE A. RUIZ, individually and as surviving spouse of ERIC RUIZ, deceased,

Petitioners,

v.

DONALD JOSEPH LAUGHLIN dba RIVERSIDE RESORT & CASINO,

Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of Arizona

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

First question—general personal jurisdiction. A Nevada casino located a few hundred feet across the Colorado River from Arizona had extensive contacts with Arizona. Those contacts included employing over 1,500 Arizona residents, advertising and soliciting business in Arizona, maintaining a casino parking lot in Arizona for Arizona customers, and providing transportation services between Arizona and Nevada. Thos minimum contacts support general personal jurisdiction in Arizona. Did Arizona courts erroneously hold that there was no general personal jurisdiction?

Second question—specific personal jurisdiction. A Nevada casino over-served an obviously intoxicated Arizona customer. Casino employees took him to the parking lot, placed him in his car, and sent him into Arizona. He drove over the bridge into Arizona, where he caused a collision killing two Arizona residents. These intentional, Arizona-aimed acts support asserting personal jurisdiction under this Court's unanimous *Calder v. Jones* "effects" test.[1] Did Arizona courts erroneously hold that there was no specific personal jurisdiction over the casino?

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[1] *Calder v. Jones*, 465 U.S. 783, 789 (1984).

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to the proceeding before this Court are:

The petitioners: Sandy Latimer, individually and as surviving spouse of Roy Latimer, deceased; Lee Latimer; Kristi Latimer; Dawn Latimer; Allison Stopke, as parent and natural guardian of Kip Stopke, a minor; and Julie A. Ruiz, individually and as surviving spouse of Eric Ruiz, deceased.

The respondent: Donald Joseph Laughlin, a Nevada citizen doing business as Riverside Resort & Casino.

Under Rule 29.6, Rules of the Supreme Court, Petitioners state that they and all Respondents are individuals and not corporations, with the exception of Riverside Resort & Casino—which is really just a Nevada citizen—Donald Joseph Laughlin—doing business under a corporate name.

TABLE OF CONTENTS

Page

Questions Presented i

Parties to the Proceeding and Rule 29.6 Statement ii

Table of Authorities v

Petition for Writ of Certiorari 1

Opinions and Orders below 1

Jurisdiction 1

Statutory and Constitutional Provisions Involved 2

Standard of Review 2

Statement of the Case 2

1. Introduction 2

2. Having abundant jurisdictional connections with Arizona, the Nevada casino is located just a few hundred feet across the Arizona border. 4

3. The Nevada casino over-served an Arizona patron, got his car, placed him in it, and sent him across the bridge into Arizona—with predictably catastrophic results. 7

4. The Arizona state-court case ended in dismissal for an alleged lack of personal jurisdiction. 8

Reasons for Granting the Petition 9

1. Arizona courts may assert general personal jurisdiction over the casino because of its extensive contacts with Arizona. 9

2. Because the casino and its employees targeted Arizona, that state's courts may assert specific personal jurisdiction over them under the *Calder* "effects" test. 10

3. The casino's Arizona-directed action met the intent requirement of the *Calder* "effects" test. Thus, Arizona courts can constitutionally assert specific personal jurisdiction over the casino. 14

4. Border bars and casinos negligently furnishing alcohol to their patrons create problems that the *Calder* "effects" test will help cure. 17

Conclusion 20

Appendix

Appendix A: Arizona Court of Appeals Memorandum Decision, dated June 24, 2008 . 1a

Appendix B: Arizona Supreme Court denial of review, dated October 29, 2008 . . . . . 13a

TABLE OF AUTHORITIES

Page

Cases

Bancroft & Masters, Inc. v. Augusta Nat'l Inc.,
223 F.3d 1082 (9th Cir. 2000) 12, 13, 14

Batton v. Tenn. Farmers Mut. Ins. Co.,
153 Ariz. 268, 736 P.2d 2 (1987) 9

Bohreer v. Erie Ins. Exch.,
216 Ariz. 208, 165 P.3d 186 (App. 2007) 9

Burger King Corp. v. Rudzewicz,
471 U.S. 462 (1985) 10

Calder v. Jones,
465 U.S. 783 (1984) ..... *passim*

Cohen v. Barnard, Vogler & Co.,
199 Ariz. 16, 13 P.3d 758 (App. 2000) 19

Cook v. Avi Casino Enters., Inc.,
Ariz. Ct. App. Case No. 1 CA-CV 07-0110,
2008 WL 4108121 (March 20, 2008), *rev. denied*, Oct. 28, 2008, *pet. for writ of cert. filed*,
Jan. 22, 2009 19

Core-Vent Corp. v. Nobel Indus. AB,
11 F.3d 1482 (9th Cir. 1993) 15

Far West Capital, Inc. v. Towne,
46 F.3d 1071 (10th Cir. 1995) 15

Gates Learjet Corp. v. Jensen,
743 F.2d 1325 (9th Cir. 1984) 18

Guidry v. U.S. Tobacco Co.,
188 F.3d 619 (5th Cir. 1999) 17

Hoeller v. Riverside Resort Hotel,
169 Ariz. 452, 820 P.2d 316 (App. 1991) 19

International Shoe Co. v. Washington,
326 U.S. 310 (1945) 10

Janmark, Inc. v. Reidy,
132 F.3d 1200 (7th Cir. 1997) 15

Keeton v. Hustler Magazine,
444 U.S. 286 (1980) 15, 16

Latimer v. Laughlin,
Ariz. Ct. App. Case No. 1 CA-CV 07-0417, 2008
WL 2584451 (June 24, 2008) 1,7, 8

Menken v. Emm,
503 F.3d 1050 (9th Cir. 2007) 2

Quill Corp. v. North Dakota by and through Heitkamp,
504 U.S. 298 (1992) 10

Schwarzenegger v. Fred Martin Motor Co.,
374 F.3d 797 (9th Cir. 2004) 13

Womack v. KC Arena, Inc.,
Ariz. Ct. App. Case No. 1 CA-CV 07-0127, 2008
WL 3915959 (Feb. 26, 2008) *rev. denied*, Oct. 28,
2008 19

World-Wide Volkswagen Corp. v. Woodson,
465 U.S. 770 (1984) 9, 15, 16

Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme,
433 F.3d 1199 (9th Cir. 2006) 12, 13

Statutes, Rules, and Constitutional Provisions

U.S. Const. amend XIV 2

28 U.S.C. § 1257(a) 1

Sup. Ct. R. 10 ..... 2, 10, 11

Sup. Ct. R. 13(1) 2

Sup. Ct. R. 29.6 ii

Ariz. R. Civ. P. 4.2(a) 2

Other Authorities

C. Douglas Floyd & Shima Baradaran-Robison, *Toward a Unified Test of Personal Jurisdiction in an Era of Widely Diffused Wrongs: The Relevance of Purpose and Effects*, 81 IND. L.J. 601 (Spring 2006) 13

Sarah L.S. Gary, *et al.*, *Consideration of Driver Home County Prohibition and Alcohol Related Crashes*, 35(5) ACCID. ANAL. & PREVEN. 641 (2003) 17

James E. Lange, *et al.*, *South of the Border: A Legal Haven for Underage Drinking*, 97(9) ADDICTION 1195 (Sept. 2002) 17, 18

Frank A. Sloan, *et al.*, *Effects of Tort Liability and Insurance on Heavy Drinking and Drinking and Driving*, 38 J.L. & ECON. 49 (April 1995) 18

Frank A. Sloan, *et al.*, *Liability, Risk Perceptions and Precautions at Bars*, 43 J.L. & ECON. 473, 499 (Oct. 2000) 18

Emily Stout, *et al.*, *Reducing Harmful Alcohol-Related Behaviors: Effective Regulatory Methods*, 61 J. STUD. ALCO. & DRUGS 402 (2000) 18

Robert B. Voas, *et al.*, *The Effects of Establishing Closing Hours in Juarez*, PAC. INST. FOR RES. AND EVAL. 3 (2006) 18

RESTATEMENT (SECOND) OF AGENCY § 5.01(3) (2006) 14

RESTATEMENT (SECOND) OF CONFLICTS § 37 (1971) 16, 17

RESTATEMENT (SECOND) OF TORTS § 8A (1965) 13, 17

RESTATEMENT (SECOND) OF TORTS § 12(2) (1965) 14

RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL HARM § 1(b) (Nov. 1, 2005 draft) 13, 17

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully seek a Writ of Certiorari to review the Arizona Supreme Court's and the Arizona Court of Appeals' incorrect dismissal of this case for an alleged lack of general and specific personal jurisdiction.

OPINIONS AND ORDERS BELOW

Petitioners ask this Court to review:

(1) The Arizona Court of Appeals' June 24, 2008 memorandum decision affirming dismissal of Petitioners' complaint. *Latimer v. Laughlin*, Ariz. Ct. App. Case No. 1 CA-CV 07-0417, 2008 WL 2584451 (June 24, 2008).

(2) The Arizona Supreme Court's October 28, 2008 Order denying the petition for review of the Arizona Court of Appeals' June 24, 2008 memorandum decision.

JURISDICTION

On October 28, 2008, the Arizona Supreme Court denied the Petitioners' petition for review of the Arizona Court of Appeals' June 24, 2008 memorandum decision affirming dismissal of the Petitioners' complaint. That dismissal was made for an alleged lack of personal jurisdiction.[2] This Court has

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[2] *Latimer v. Laughlin*, Ariz. Ct. App. Case No. 1 CA-CV 07-0417, 2008 WL 2584451 (June 24, 2008).

jurisdiction under 28 U.S.C. § 1257(a) and under Rules 10 and 13(1), Rules of the Supreme Court.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

> **Rule 4.2(a), Arizona Rules of Civil Procedure.** A court of this state may exercise personal jurisdiction over parties, whether found within or outside the state, to the maximum extent permitted by the Constitution of this state and the Constitution of the United States.
>
> **Amendment XIV, United States Constitution.** No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . .

STANDARD OF REVIEW

Federal courts review de novo a decision dismissing a case for lack of personal jurisdiction.[3]

STATEMENT OF THE CASE

1. Introduction.

A Nevada casino located a few hundred feet from Arizona had immensely strong business and consumer connections with Arizona. The casino's employees over-served one of the casino's Arizona customers, brought his car to him, and placed him in that

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[3] *Menken v. Emm*, 503 F.3d 1050, 1056 (9th Cir. 2007).

car—enabling him to drive across a bridge into Arizona. The drunken patron promptly caused a traffic collision killing two Arizona residents. General jurisdiction is evident—although Arizona state courts found otherwise. But far more important, the case evokes the unanimous *Calder v. Jones* personal-jurisdiction "effects" test.[4] The casino aimed its tortious conduct at Arizona and its residents as surely as if it had launched a missile at Arizona. Applying the effects test is essential for the Petitioners to prosecute their dram-shop case.

The broader, underlying problem is the extreme, expanding danger posed by border casinos and bars. Whether freestanding bars or part of large casinos, border liquor establishments repeatedly serve obviously inebriated customers and send them away to kill and main residents of bordering states. As this case exemplifies, people living and travelling in border states like Arizona are at risk from the negligent furnishing of alcohol in across-the-border jurisdictions like Nevada and California. Those jurisdictions lack any civil dram-shop liability to help curb the alcohol-service negligence of their own border bars and casinos. But this Court's 1984 *Calder v. Jones* effects test offers a remedy. The effects test sanctions personal jurisdiction when a border casino or bar has made people in a neighboring state targets of its alcohol-service negligence. *Calder*'s fair, simple, logical jurisdictional-effects test will permit a dram-shop remedy in this case. And it will also, in future cases, impose civil accountability on border bars and casinos. That will encourage those liquor purveyors to

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[4] *Calder v. Jones*, 465 U.S. 783 (1984).

serve liquor more responsibly—avoiding or reducing future human suffering, and saving lives that would otherwise be lost.

2. Having abundant jurisdictional connections with Arizona, the Nevada casino is located just a few hundred feet across the Arizona border.

At every stage of the state-court proceedings, the operative facts have been undisputed. Respondent Donald J. Laughlin ("Laughlin")—doing business as the Riverside Resort and Casino—operates a popular casino. It is located in Laughlin, Nevada—directly across the Colorado River from Bullhead City, Arizona.[5] A corporation actually owns the casino's physical property.[6] And Laughlin holds the gaming and business licenses and leases the premises from a corporation.[7] For the sake of simplicity —and because of Laughlin's byzantine mix of personal and corporate ownership and control—this Petition will usually refer collectively to the responsible entities as the "casino."

The Nevada casino has so many contacts with Arizona that it could be mistaken for an Arizona business. For instance, the casino leases and controls a parking lot in Bullhead City, Arizona—right across

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[5] *App. to Pet. for Rev. to Ariz. Sup. Ct.* at Exh. 1, p. 3 and at Exh. 6, ¶ 5.

[6] *Id.* at Exh. 4, p. 2.

[7] *Id.* at Exh. 4, sub-exhs. A-C.

the Colorado River from the casino.[8] The lot provides parking for many of the casino's Arizona customers. In fact, casino personnel refer to the lot as the "Arizona parking lot."[9] The casino sets aside part of that Arizona lot for the over 1,500 casino employees who live in Arizona.[10] Casino employees who park in unauthorized areas of the Arizona lot will have their vehicles towed at their own expense.[11]

Laughlin actually built a bridge spanning the Colorado River near the casino.[12] The casino owns a shuttle van and several boats taking casino customers and casino employees between the casino and the Arizona parking lot. Indeed, the casino also owns the Arizona boat dock where the casino's boats pick up Arizona residents parking at the Arizona lot.[13] The casino maintains the Arizona parking lot and has responsibility for security—patrolling it with security personnel 9 to 12 times a day.[14]

The casino has still other Arizona contacts. For example, the casino leases hangar space at the

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[8] *Id.* at Exh. 2, p. 4; Exh. 3, p. 6; Exh. 5, p. 8, lines 1-7.

[9] *Id.* at Exh. 2, p. 4, and sub-exh. D.

[10] *Id.* at Exh. 2, p. 4, and sub-exh. E.

[11] *Id.*

[12] *Id.* at Exh. 2, p. 8, and sub-exh. F.

[13] *Id.* at Exh. 2, p. 4, and sub-exh. B.

[14] *Id.* at Exh. 2, p. 4, and sub-exh. A.

Laughlin/Bullhead Airport in Bullhead City.[15] The casino transports customers to and from that airport and the casino.[16] The casino also leases billboard space in Bullhead City and Wikieup, Arizona.[17] Moreover, the casino sends mass mailings into Arizona.[18] And it does direct business with at least 70% of the businesses in Bullhead City.[19] The casino's website advertises weddings in Arizona as part of a wedding package on the "USS Riverside," and gives instructions on obtaining wedding licenses from the Mohave County Clerk's Office.[20] The casino facilitates on-line lodging reservations, conditioned upon a website transfer of guest credit-card information, and provides e-mail addresses of various casino managers.[21] The casino sponsors a Bullhead City telephone number for making hotel and restaurant reservations and for contacting the Riverside Resort about any aspect of the Laughlin operation. An online reverse directory shows the Bullhead City telephone number as located at 1650 Camino Court in Bullhead City, Arizona.[22] And the casino offers patron discounts

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[15] *Id.* at Exh. 1, p. 2, and sub-exh. B.

[16] *Id.* at Exh. 2, p. 5.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at Exh. 2, p. 6, and sub-exh. C.

[22] *Id.* at Exh. 2, p. 6

for many businesses in Kingman, Bullhead City, and Topock, Arizona.[23]

Laughlin personally owns or has a beneficial interest in many parcels of real property in Arizona—including the Arizona parking lot—through the Mohave Land, LLC, an Arizona limited liability company. The Donald J. Laughlin Family Trust is listed as an officer and director of the limited liability company.[24] Finally, Laughlin has bank accounts with JP Morgan Chase Bank, First Union Bank and Bank of America offices all located in Bullhead City, Arizona.[25]

3. The Nevada casino over-served an Arizona patron, got his car, placed him in it, and sent him across the bridge into Arizona—with predictably catastrophic results.

In the evening of February 20, 2003, an Arizona resident drove from Arizona to the casino in Laughlin, Nevada.[26] He left his car at a casino lot next to the casino. The customer excessively drank alcohol at the casino into the early morning of February 21, 2003. Casino security guards then escorted him from the premises, secured his car, and put him in it—although they knew that he was severely alcohol-impaired. He

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[23] *Id.*

[24] *Id.* at Exh. 2, p. 6, sub-exh. J.

[25] *Id.* at Exh. 1, sub-exh. B at p. 2.

[26] *Latimer v. Laughlin*, Ariz. Ct. App. Case No. 1 CA-CV 07-0417, slip op. at ¶ 2 (June 24, 2008)

left the casino, crossed the bridge into Arizona, and promptly caused a collision that killed two Arizona residents.[27]

4. The Arizona state-court case ended in dismissal for an alleged lack of personal jurisdiction.

Petitioners sued the driver, Laughlin, the casino, and associated entities in the Arizona superior court in Mohave County.[28] There was some judicial confusion over the corporate forms associated with Laughlin. But in the end, the superior court dismissed the case against Laughlin and the casino because of an alleged lack of either general or specific personal jurisdiction over them.[29] The Arizona Court of Appeals agreed that there was no general or personal jurisdiction, and affirmed dismissal.[30] On October 28, 2008, the Arizona Supreme Court declined review, setting the stage for this Petition for Writ of Certiorari.

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[27] *Id.* at ¶ 2.

[28] *Id.* at ¶ 3.

[29] *Id.* at ¶ 4-6.

[30] *Id.* at ¶ 19.

REASONS FOR GRANTING THE PETITION

1. Arizona courts may assert general personal jurisdiction over the casino because of its extensive contacts with Arizona.

Arizona courts have general personal jurisdiction if a defendant has sufficient minimum contacts with the state that suing there "does not offend traditional notions of fair play and substantial justice."[31] A defendant need only have substantial—or continuous and systematic—contacts with Arizona.[32] Here, Arizona courts may constitutionally assert general jurisdiction over the Nevada casino, since it has substantial, continuous, and systematic contacts with Arizona. Moreover, its conduct and connection with Arizona are so strong that it should have reasonably anticipated suit in Arizona.[33]

Arizona courts should have recognized general personal jurisdiction over Laughlin and the border casino that he owns and operates. The casino had, after all, substantial, continuous contacts with Arizona and with its residents. But the Arizona courts decided the general jurisdiction question in a way that directly conflicts with this Courts established minimum-

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[31] *Bohreer v. Erie Ins. Exch.*, 216 Ariz. 208, 213, 165 P.3d 186, 191 (App. 2007).

[32] *Batton v. Tenn. Farmers Mut. Ins. Co.*, 153 Ariz. 268, 270, 736 P.2d 2, 4 (1987).

[33] *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

contacts personal-jurisdiction decisions.[34] That is an important federal question that this Court settled long ago.[35] The Arizona courts' departure from this Court's clear decisions has denied to the Petitioners any chance to prosecute their dram-shop lawsuit on its merits. Petitioners are entitled to sue the Nevada casino in Arizona because of that casino's abundant contacts with Arizona. Under Rule 10(c), Rules of the Supreme Court, this is precisely the sort of case justifying acceptance of the Petition.

2. Because the casino and its employees targeted Arizona, that state's courts may assert specific personal jurisdiction over them under the *Calder* "effects" test.

Specific jurisdiction exists when a defendant purposefully creates contacts in the forum or purposefully directs its acts at people in that forum.[36] And that is what the casino and its employees did. They over-served a casino customer, took him to his

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[34] *Quill Corp. v. North Dakota by and through Heitkamp*, 504 U.S. 298, 307 (1992) (This Court has "abandoned more formalistic tests that focused on a defendant's 'presence' within a State in favor of a more flexible inquiry into whether a defendant's contacts with the forum made it reasonable, in the context of our federal system of Government, to require it to defend the suit in that State.").

[35] *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) ("For a court to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least 'minimum contacts' with the relevant forum such that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.").

[36] *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985).

car, and aimed him at Arizona. Their acts targeted Arizona as surely as if they had fired a mortar across the border. The facts prove specific personal jurisdiction under this Court's *Calder v. Jones* "effects" test.[37]

The key aspect of this appeal is the Arizona courts' refusal to apply the *Calder* analysis that this Court adopted in 1984. The Arizona courts have thus decided an important federal question in a way directly conflicting with this Court's unanimous *Calder* opinion. That failure supports accepting this Petition, under the terms of Rule 10(c), Rules of the Supreme Court.

In *Calder*, entertainer Shirley Jones sued the writer and editor of a libelous *National Enquirer* article in California state court. The defendants fought personal jurisdiction, arguing that they had written and edited the article solely in Florida.[38] But this Court unanimously held that California jurisdiction was proper because the defendants had not committed "mere untargeted negligence."[39] Rather, they "expressly aimed" their "intentional, and allegedly tortious, actions" at California.[40] After all, the defendants had written and edited "an article that they *knew* would have a potentially devastating impact upon respondent. And they *knew* that the brunt of

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[37] *Calder v. Jones*, 465 U.S. 783, 789 (1984).

[38] *Id.* at 785-86.

[39] *Id.* at 789.

[40] *Id.*

that injury would be felt by respondent in [California where] she live[ed] and work[ed]."[41] And California courts had jurisdiction because of the Florida conduct producing damaging "effects" in California.[42]

Calder emphasized both the defendants' intentional and allegedly tortious actions, and their reasonable anticipation of being haled into court in California for those actions.[43] Here, the casino intentionally served alcoholic beverages to an obviously intoxicated patron, brought his car to him, placed him in his car, and sent him across the bridge to Arizona. Thus, as in *Calder*, the casino targeted its acts and its effects at another state—and should have anticipated a lawsuit there.

Indeed, *Calder* shows that, under certain circumstances, an intentional act—even if not wrongful—suffices for personal jurisdiction. After all, *Calder* held that the jurisdictional acts were "intentional, *and* allegedly tortious"—not that the acts were an intentional tort.[44] As the Ninth Circuit explained, "we do not read *Calder* necessarily to require in purposeful direction cases that all (or even any) jurisdictionally relevant effects have been caused by wrongful acts."[45] That is, "intent" in *Calder*

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[41] *Id.* at 789-90 (emphasis added).

[42] *Id.* at 789.

[43] *Id.* at 789-90.

[44] *Id.* at 789 (emphasis added).

[45] *Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*, 433 F.3d 1199, 1208 (9th Cir. 2006) (partially overruling *Bancroft*

possesses "specialized meaning" referring "to an intent to perform an actual, physical act in the real world, rather than an intent to accomplish a result or consequence of that act."[46] The *Calder* intent is intent to act—not intent to commit an intentional tort.

Here, the casino intended to—and did—perform actual, physical acts. But even if *Calder* required a "wrongful" intentional act, the casino did that by over-serving an intoxicated casino employee—even taking his car to him, putting him in it, and aiming him at Arizona. Those acts were intentional wrongful conduct, since it was substantially certain that the driver would harm someone in Arizona. After all, "intent" is *not* limited to desired consequences.[47] That is, if a person acts knowing that the consequences pose a substantial risk—or that harm is substantially certain to result—the law treats that person as having "desired to produce the result."[48]

& Masters, Inc. v. Augusta Nat'l Inc., 223 F.3d 1082 (9th Cir. 2000)).

[46] *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 806 (9th Cir. 2004).

[47] C. Douglas Floyd & Shima Baradaran-Robison, *Toward a Unified Test of Personal Jurisdiction in an Era of Widely Diffused Wrongs: The Relevance of Purpose and Effects*, 81 IND. L.J. 601, 639 (Spring 2006) (*Calder* "should at the most be interpreted to require the defendant to have committed a tortious act knowing to a substantial certainty that it will have its impact on the plaintiff in the forum state.").

[48] RESTATEMENT (SECOND) OF TORTS § 8A (1965); RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL HARM § 1(b) (Nov. 1, 2005 draft).

3. The casino's Arizona-directed actions met the intent requirement of the *Calder* "effects" test. Thus, Arizona courts can constitutionally assert specific personal jurisdiction over the casino.

In fact, *Calder*'s intent requirement is broader—and far easier to satisfy—that may first appear. After all, while the *Calder* defendants meant to write an article with California as the focal point, their motive was surely only greater newspaper sales. No evidence ever even implied that they wanted to inflict *intentional* harm. And while they knew the article might cause harm in California, to them that was surely no more than a foreseeable side-effect. Here, the casino not only *knew* the likely harm to forum residents—it *intended* to serve the driver, to retrieve his car, to place him in that car, and to launch him onto the road to Arizona.[49] Under *Calder*, that intent supports jurisdiction.

Calder also emphasized that the defendants had "expressly aimed" conduct at California.[50] Some opinions hold that the expressly-aiming requirement is met when the defendant engages in "wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state."[51] Other opinions hold that the forum state itself must be the

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[49] RESTATEMENT (SECOND) OF AGENCY § 5.01(3) (2006) (defining notice); RESTATEMENT (SECOND) OF TORTS § 12(2) (1965) (same).

[50] *Calder v. Jones*, 465 U.S. 783, 789 (1984).

[51] *Bancroft & Masters, Inc. v. Augusta Nat'l*, 223 F.3d 1082, 1087 (9th Cir. 2000).

"focal point of the tort."[52] But the effects test applies either way, since: (1) the casino targeted Arizona residents by impairing the driver and sending him to Arizona and (2) the tortious focal point was Arizona.[53]

In assessing "purposeful direction," *Calder* stressed that the *National Enquirer* defendants "knew" the brunt of the injury "would be felt" in the forum state.[54] Moreover, in *Keeton v. Hustler Magazine*, filed the same day as *Calder*, this Court upheld jurisdiction in a New Hampshire libel case, although "the bulk of the harm done to petitioner occurred outside" the forum.[55] Here, *all* harm done to the Petitioners occurred in Arizona. And, from the casino's viewpoint, that was a substantially-certain risk and an entirely-predictable result.[56]

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[52] *See Far West Capital, Inc. v. Towne*, 46 F.3d 1071, 1080 (10th Cir. 1995).

[53] *See also Janmark, Inc. v. Reidy*, 132 F.3d 1200, 1202 (7th Cir. 1997) (After *Calder*, there is "no serious doubt" that the state where a tort victim "suffers the injury may entertain a suit against the accused tortfeasor.").

[54] *Id.* at 789-90.

[55] *World-Wide Volkswagen Corp. v. Woodson*, 465 U.S. 770, 780 (1984).

[56] *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1486 (9th Cir. 1993) ("*Calder* thus established that personal jurisdiction can be predicated on (1) intentional actions (2) expressly aimed at the forum state (3) causing harm, the brunt of which is suffered—and which the defendant knows is likely to be suffered—in the forum state.").

In concluding that personal jurisdiction over the Florida defendants was proper because of the conduct's effects in California, this Court cited *World-Wide Volkswagen Corp. v. Woodson*, where an Audi sedan sold in New York to New York residents was struck in the rear by another car while the Audi's owners were driving through Oklahoma on their way to a new home in Arizona.[57] (The Audi's sellers had no idea that the car was destined for use in either distant state.) The Audi's gas tank and fuel system ruptured, causing severe burns to three of its passengers. *Calder* cited *World-Wide* because that case had held that a defendant cannot be sued in a foreign forum unless it reasonably should know that the effects of its acts might cause injury there. In *Latimer*, on the other hand, the casino and its staff *knew* where the effects would hit—in Arizona. Indeed, if they had helped make a defective car and shipped it into Arizona, there would be no question of personal jurisdiction if the car injured people there. In this case, they helped make an impaired driver and shipped him into Arizona. There should also be no question of personal jurisdiction based on that conduct's effects.

Calder also cited and relied on Section 37 of the Restatement (Second) of Conflicts, which supports personal jurisdiction for acts not done "with the intention of causing effects" in the forum state—*but* which could reasonably have been expected to do so.[58] The forum may assert jurisdiction over "the defendant if the effects which could have been anticipated and

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[57] *Keeton v. Hustler Magazine*, 444 U.S. 286 (1980).

[58] RESTATEMENT (SECOND) OF CONFLICTS § 37 cmt. a (1971).

which actually occurred are of a sort highly dangerous to persons or things. This is so even though the defendant has no other relationship to the state."[59] Since the anticipated Arizona effect was severe personal injury or death, Section 37's "effects" test anchors *Calder*'s analysis.[60]

4. Border bars and casinos negligently furnishing alcohol to their patrons create problems that the *Calder* "effects" test will help cure.

Finally, in this case the *Calder* effects test implicates other important public-policy concerns. After all, unregulated border bars and casinos create complex—and almost intractable—problems for cross-border areas. They include personal injuries, death, and an uncritical acceptance of drunken, unsafe conduct.[61] Dram-shop liability is vital in cross-border

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[59] *Id*. *See also Guidry v. U.S. Tobacco Co.*, 188 F.3d 619, 629 (5th Cir. 1999) (Under "*Calder*, the effects of torts committed outside the forum state that cause death or serious physical harm may also serve as minimum contacts with the forum for purposes of personal jurisdiction.").

[60] RESTATEMENT (SECOND) OF TORTS § 8A (1965); RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL HARM § 1(b) (Nov. 1, 2005 draft).

[61] *See, e.g.*, Sarah L.S. Gary, *et al.*, *Consideration of Driver Home County Prohibition and Alcohol-Related Crashes*, 35(5) ACCID. ANAL. & PREVEN. 641, 648 (2003) (Dry-county alcohol regulations may be counter-productive, since people seeking to avoid them drive farther under the influence of alcohol and thus increase their exposure to crashes.); James E. Lange, *et al.*, *South of the Border: A Legal Haven for Underage Drinking*, 97(9) ADDICTION

areas since it provides private compensation for tort victims *and* lowers public costs to care for them.[62] Moreover, research proves that civil tort liability is one of the most effective ways to control excess drinking and its effects.[63] Thus, Arizona public policy favoring dram-shop liability reinforces personal jurisdiction to

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1195, 1202 (Sept. 2002) ("The absence of supervision or formal controls not only prevents intervention with the drinker to limit heavy drinking, but also makes acceptance of drunken behavior without criticism more likely."); Robert B. Voas, *et al.*, *The Effects of Establishing Closing Hours in Juarez*, PAC. INST. FOR RES. AND EVAL. 3 (2006) ("The border provides a passage into a new environment where home community norms do not apply to drinkers, where short-term deviant behavior will go uncriticized, and where it can be rationalized as low risk because, insofar as drinking is concerned, it is not relevant to normal lifestyle.").

[62] *See, e.g.*, *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1333 (9th Cir. 1984) ("Arizona has a strong interest in ensuring that its citizens are fully compensated for their injuries, in part to protect the state's economic resources from unnecessary expenditures.").

[63] *See, e.g.*, Emily Stout, *et al.*, *Reducing Harmful Alcohol-Related Behaviors: Effective Regulatory Methods*, 61 J. STUD. ALCOHOL & DRUGS 402-12 (2000); Frank A. Sloan, *et al.*, *Liability, Risk Perceptions and Precautions at Bars*, 43 J.L. & ECON. 473, 499 (Oct. 2000) ("Given our results, and those of past studies, there is a strong rationale for relying on tort law as a method for controlling excessive alcohol use."); Frank A. Sloan, *et al.*, *Effects of Tort Liability and Insurance on Heavy Drinking and Drinking and Driving*, 38 J.L. & ECON. 49, 73 (April 1995) (The "traditional negligence rule" is more effective in reducing binge drinking than criminal sanctions.).

the federal Constitution's *maximum* extent.[64] And that is what this Court should also allow in this case.

These concerns are not theoretical. Almost two decades ago, as the Nevada border casinos were steadily expanding, practical experience had already shown that a disproportionately high number of alcohol-impaired drivers in Arizona had received free alcoholic drinks at Nevada border casinos. The drivers were then entering Arizona and harming Arizona residents—as happened here.[65] Indeed, in 2008 alone, Arizona appellate courts refused to apply the *Calder* effects test in three dram-shop cases involving negligent alcohol service by Nevada border bars and casinos. Including this case, the toll in those three cases was one motorcyclist with an amputated leg and other life-threatening injuries—and three dead.[66] The threat of Arizona civil dram-shop liability might have

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[64] *Cohen v. Barnard, Vogler & Co.*, 199 Ariz. 16, 18, 13 P.3d 758, 760 (App. 2000) ("Arizona's long-arm statute is very broad and is intended to allow Arizona to exert personal jurisdiction over a non-resident litigant to the maximum extent permitted by the United States Constitution.").

[65] *Hoeller v. Riverside Resort Hotel*, 169 Ariz. 452, 454, 820 P.2d 316, 318 (App. 1991).

[66] Two died in *Latimer*. A motorist over-served at a Nevada border bar ran down and killed a pedestrian in Bullhead City, Arizona in *Womack v. KC Arena, Inc.*, Ariz. Ct. App. Case No. 1 CA-CV 07-0127, 2008 WL 3915959 (Feb. 26, 2008) *rev. denied*, Oct. 28, 2008. And a Nevada casino employee over-served at her own casino caused a crash in Arizona leading to amputation of a motorcyclist's leg—and other life-threatening injuries—in *Cook v. Avi Casino Enters., Inc.*, Ariz. Ct. App. Case No. 1 CA-CV 07-0110, 2008 WL 4108121 (March 20, 2008), *rev. denied*, Oct. 28, 2008, *pet. for writ of cert. filed*, Jan. 22, 2009

prevented those tragedies. But Arizona courts believed that they could not assert specific personal jurisdiction. This Court should accept this Petition and hold that the *Calder* effects test is not a dusty anachronism—but a fair, logical, and *controlling* doctrine allowing specific personal jurisdiction in these types of cases over otherwise uncontrolled and irresponsible border casinos and bars.

CONCLUSION

Petitioners respectfully ask the Court to grant their Petition for Writ of Certiorari, to vacate the contrary Arizona appellate decisions, to vacate the dismissal entered against them, and to remand this case to Arizona superior court for trial on the merits of their claims.

Respectfully submitted,

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January 2009

APPENDIX

APPENDIX A

ARIZONA COURT OF APPEALS

Case No. 1 CA-CV 07-0417

[Dated June 24, 2008]

Sandy **LATIMER**, individually and as surviving spouse of Roy Latimer, deceased; Lee Latimer; Kristi Latimer; Dawn Latimer; Allison Stopke, as parent and natural guardian of Kip Stopke, a minor; and Julie A. Ruiz, individually and as surviving spouse of Eric Ruiz, deceased,

Plaintiffs / Appellants,

v.

Donald Joseph **LAUGHLIN** dba Riverside Resort & Casino,

Defendants / Appellees.

[2008 WL 2584451]

Appeal from the Superior Court in Mohave County
Cause No. CV 2004-7025
The Honorable Randolph A. Bartlett, *Judge*.

AFFIRMED

Wachtel Biehn & Malm by Denis R. Malm, Kenneth E. Moyer, Lake Havasu City, Attorneys for Plaintiffs/Appellants Latimer/Stopke.

Steven E. Mundy, Lake Havasu City, Attorney for Plaintiff/Appellant Ruiz.

Bremer Whyte Brown & O'Meara, LLP by Jeffrey D. Holland, John J. Belanger, Phoenix, Attorneys for Defendants/Appellees.

MEMORANDUM DECISION

NORRIS, Judge.

Sandy Latimer, Lee Latimer, Kristi Latimer, Dawn Latimer, Allison Stopke, and Julie A. Ruiz ("Plaintiffs") appeal the superior court's dismissal of their claims against Donald Joseph Laughlin d.b.a. Riverside Resort & Casino ("Riverside Casino") for lack of personal jurisdiction. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

On the evening of February 20, 2003, Daniel Brackney drove from Arizona to Laughlin, Nevada; left his vehicle in the possession of Riverside Casino; and consumed alcohol at the Riverside Casino into the morning of February 21, 2003. Riverside Casino security personnel escorted Brackney from the premises and allegedly put him in his vehicle knowing he was severely impaired. After leaving the Riverside Casino, Brackney drove on Highway 68 in Mohave

County, Arizona, and struck a vehicle. Eric Ruiz and Roy Latimer, passengers in that vehicle, died as a result of the accident. At the time of the accident, Brackney, Ruiz, and Latimer were all Arizona residents.

Plaintiffs brought suit in Mohave County, Arizona, against Brackney, Riverside Casino, and Riverside Resort and Casino, Inc. ("Riverside, Inc."). Riverside, Inc., a Nevada corporation, leases its premises to Riverside Casino for the operation of the casino. The suit alleged claims in tort arising out of the accident.

In October 2006, Riverside, Inc. moved for summary judgment asserting Arizona did not have personal jurisdiction-either general or specific-over it. Riverside, Inc. and Riverside Casino then simultaneously filed a separate motion to dismiss for lack of personal jurisdiction. In their response to the motion to dismiss, Plaintiffs identified several contacts between "Riverside"[1] and Arizona which, they asserted, established either general or specific jurisdiction.

The superior court ruled on "Riverside Resort and Casino's Motion for Partial Summary Judgment" and found it did not have personal jurisdiction. Although not clear from the text of the minute entry, the court, in a subsequent judgment, clarified that its ruling applied only to Riverside, Inc.

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[1] Although the caption of the motion for summary judgment indicated it only pertained to Riverside, Inc., the text of the motion was imprecise as to which defendant-Riverside, Inc. or Riverside Casino-was moving for summary judgment. Thus, the Plaintiffs' response addressed both entities together as "Riverside."

After the court ruled on the summary judgment motion, it heard oral argument on the motion to dismiss for lack of personal jurisdiction which, by then, pertained only to Riverside Casino. At the close of argument, the superior court granted the motion to dismiss and entered a separate judgment for Riverside Casino. Plaintiffs timely appealed the judgment entered in favor of Riverside Casino. We have jurisdiction pursuant to Article 6, section 9 of the Arizona Constitution and Arizona Revised Statutes sections 12-120.21 and -2101 (2003).

DISCUSSION

"We review de novo a trial court's dismissal for lack of personal jurisdiction, viewing the facts in the light most favorable to the plaintiffs." *Rollin v. William V. Frankel & Co., Inc.*, 196 Ariz. 350, 352, ¶ 5, 996 P.2d 1254, 1256 (App. 2000) (citing *A. Uberti & C. v. Leonardo*, 181 Ariz. 565, 567, 569, 892 P.2d 1354, 1356, 1358 (1995)).

Arizona may exercise personal jurisdiction over a nonresident defendant "to the maximum extent permitted by the" Arizona and United States Constitutions. Ariz. R. Civ. P. 4.2(a). Personal jurisdiction can only be exercised when a defendant has "sufficient minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Williams v. Lakeview Co.*, 199 Ariz. 1, 3, ¶ 6, 13 P.3d 280, 282 (2000) (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 320, 66 S. Ct. 154, 160, 90 L. Ed. 95 (1945) ("*Williams II*"). Personal jurisdiction, either general or specific, requires a defendant to have "purposefully established 'minimum contacts' in"

Arizona. *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474, 105 S. Ct. 2174, 2183, 80 L.Ed.2d 528 (1985)).

I. General Jurisdiction

"General jurisdiction subjects the defendant to suit on virtually any claim, '[e]ven when the cause of action does not arise out of or relate to the [defendant's] activities'" in Arizona. *Rollin*, 196 Ariz. at 352-53, ¶ 9, 996 P.2d at 1256-57 (quoting *Batton v. Tennessee Farmers Mut. Ins. Co.*, 153 Ariz. 268, 270, 736 P.2d 2, 4 (1987) (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416, 104 S.Ct. 1868, 1872, 80 L.Ed.2d 404, 411 (1984))) (internal quotation marks omitted). General jurisdiction applies only when the defendant has "substantial" or "continuous and systematic" contacts with Arizona. *Id.* at 353, ¶ 9,996 P.2d at 1257 (quoting *Batton*, 153 Ariz. at 270, 736 P.2d at 4). "The level of contact required to show general jurisdiction is quite high." *Williams II*, 199 Ariz. at 3, ¶ 6, 13 P.3d at 282.

When confronted with a situation analogous to this one, this court held Arizona did not have general jurisdiction over a Nevada casino. In *Williams*, passengers in a car brought suit against a casino after the casino served alcohol to their driver, who then injured them in a car accident as they left the casino. *Williams v. Lakeview Co.*, 195 Ariz. 468, 470, ¶ 2, 990 P.2d 669, 671 (App. 1999) ("*Williams I*"). The casino

> regularly advertised in a local Arizona newspaper . . . soliciting Arizona residents to visit its Nevada Casino, . . . a substantial number of [the casino's] customers were Arizona

> residents, . . . [the casino] employed seventeen Arizona residents in its Casino in Nevada, and [it] actively solicited Arizona tour bus companies to bring passengers to its Casino.

Williams I, 195 Ariz. at 471-72, ¶ 11, 990 P.2d at 672-73. We concluded these contacts were "not sufficiently substantial or continuous and systematic to support the assertion of general jurisdiction." *Id.* at 472, ¶ 11, 990 P.2d at 673. We find *Williams* to be instructive here.

In the superior court, and on appeal, Plaintiffs asserted numerous contacts between "Riverside," see supra note 1, and Arizona. We have reviewed the record closely. Our detailed examination shows most of these contacts were attributable to the dismissed defendant, Riverside, Inc.[2] This distinction is

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[2] The record contains a motion to dismiss from Riverside, Inc. filed in March 2005 and withdrawn in December 2005 and two separate responses to interrogatories by Riverside, Inc. filed in 2005 and 2006. The withdrawn motion to dismiss stated Riverside, Inc. had "entered into a lease agreement under the terms of which it leases a parking lot facility on the Arizona side of the river." Attached to the withdrawn motion to dismiss was an affidavit from its corporate attorney, Hermon B. Walker, which stated Riverside, Inc. "has no physical presence in any state other than the state of Nevada; has no offices in the state of Arizona; owns no property in the state of Arizona; and employs no agents in the State of Arizona." Instead, Riverside, Inc. "is a Nevada corporation having its sole, only and principal place of business at 1650 Casino Drive, Laughlin, Nevada," has employees who live in Arizona, and "[t]he only business owned and operated by [Riverside, Inc.] is a hotel and casino."

The 2005 interrogatory responses stated Riverside, Inc. was "a party [to] a lease contract ... for hangar space rental at the Laughlin/Bullhead Airport." In addition, Riverside, Inc. stated it

significant. Not only have Plaintiffs not appealed Riverside, Inc.'s dismissal from the case, but they have not argued (nor did they in the superior court) that the relationship between Riverside, Inc. and Riverside Casino was so interrelated that the alleged contacts between Arizona and Riverside, Inc. could be imputed to Riverside Casino. *Cf. Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 425 (9th Cir. 1977) ("It may also be just and equitable in some cases to treat two separately incorporated entities as one where the corporate vehicle is employed as a device by which to conduct 'continuous and systematic' activities in a state without subjecting the out-of-state corporation to the general jurisdiction of the forum.")

As to Riverside Casino, the record reveals it had very few contacts with Arizona. It had "accounts with JP Morgan Chase Bank, First Union Bank, and Bank of America-all located in Bullhead City, Arizona," and

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had 1,543 employees with an Arizona address and maintained transportation services from Arizona to Nevada. Riverside, Inc. further stated its average annual advertising expenditure for years 2002 through 2004 was $1.6 million dollars and it had two billboards in old Bullhead City, Arizona and one billboard near Wickieup, Arizona. Finally, "on a regular basis [Riverside, Inc.] does business with vendors of goods and services, financial institutions, and professional entities all of which are located in the State of Arizona, as does any resort property in Laughlin, Nevada. This list would be so extensive that, for all practical purposes, it would involve copying at least 70% of the Yellow Pages of the Bullhead City, Arizona telephone directory."

The 2006 responses stated Riverside, Inc. owned no land in Arizona; maintained a bank account at JP Chase Morgan Bank in Bullhead City, Arizona; "had no involvement with the operations of the Casino or the employment of any personnel," and had "not engage[ed in] business activities in Arizona" such as telephone reservations or advertising.

it "individually own[ed] an Airport Hanger [sic] at the Laughlin-Bullhead International Airport."

Plaintiffs also asserted Riverside Casino controlled and operated a parking lot in Arizona ("Arizona parking lot") for its employees and customers.[3] In addition, Plaintiffs asserted Riverside Casino had an Arizona phone number and offered its patrons membership in a local discount club where the majority of discounts are for businesses in Bullhead City, Arizona, and Kingman, Arizona. They also argued Donald J. Laughlin had built a bridge across the Colorado River from Nevada to Arizona. Finally, they asserted Riverside Casino offered wedding packages on a boat: Riverside Casino provided the minister and its website had information on obtaining an Arizona marriage license, not a Nevada license.[4]

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[3] This assertion rested largely on an affidavit filed in another case by Riverside Casino's Manager of Security. In his affidavit, the manager stated he was "personally aware that the Riverside Resort Hotel & Casino ... own[ed] a parking lot on the Arizona side of the Colorado River." As phrased, it is not clear whether the manager was referring to Riverside, Inc. or Riverside Casino. If referring to Riverside Casino, this assertion would be contrary to the withdrawn motion to dismiss. *See supra* note 2. However, we do not need to assess the significance of this inconsistency because Plaintiffs used this affidavit to assert only that "Riverside," see *supra* note 1, "controlled and operated" the Arizona parking lot.

[4] Plaintiffs also asserted "Donald J. Laughlin owns or has a beneficial interest in many parcels of real property." In support of this, however, Plaintiffs only provided information showing the "Donald J. Laughlin Family Trust" was a member of a limited liability corporation that owned land in Mohave County, Arizona. The record is not sufficiently developed to support Plaintiffs' assertion regarding property ownership.

These contacts between Riverside Casino and Arizona show Riverside Casino conducted some activities in or touching Arizona. However, as in Williams I, the record shows Riverside Casino "did not regularly conduct business in Arizona, nor did it have any agents, offices, property, or other physical presence within Arizona ." *Williams I*, 195 Ariz. at 472, ¶ 11, 990 P.2d at 673. Although Riverside Casino may have used and controlled the Arizona parking lot, see supra note 3, mere use or control, in addition to Riverside Casino's limited other contacts, is not enough to establish general jurisdiction. *See, e.g.*, *Shaffer v. Heitner*, 433 U.S. 186, 209, 97 S. Ct. 2569, 2582, 53 L.Ed.2d 683 (1977) ("[A]lthough the presence of the defendant's property in a State might suggest the existence of other ties among the defendant, the State, and the litigation, the presence of the property alone would not support the State's jurisdiction."). Thus, Riverside Casino's contacts were not "sufficiently substantial or continuous and systematic" to confer general jurisdiction over Riverside Casino. *Williams I*, 195 Ariz. at 472, ¶ 11, 990 P.2d at 673; *see also Burger King Corp.*, 471 U.S. at 475, 105 S.Ct. at 2183 (no general jurisdiction when contacts are "random," "fortuitous," or "attenuated"); *Westphal v. Mace*, 671 F. Supp. 665, 667 (D.Ariz. 1987) (no general jurisdiction found over non-Arizona defendant for lawsuit concerning Nevada accident when defendant merely advertised in Arizona, sponsored travel packages through Arizona travel agents, and published a toll-free phone number in Arizona phone directories).

II. Specific Jurisdiction

If an Arizona court cannot exercise general jurisdiction over a non-resident defendant, it "may still find specific jurisdiction if: (1) the defendant purposefully avails himself of the privilege of conducting business in the forum; (2) the claim arises out of or relates to the defendant's contact with the forum; and (3) the exercise of jurisdiction is reasonable." *Williams II*, 199 Ariz. at 3, ¶ 7, 13 P.3d at 282. The "plaintiff's claim must result from alleged injuries that arise out of or relate to [the defendant's] . . . activities." *Id.* at 4, ¶ 11, 13 P.3d at 283 (quoting *Burger King Corp.*, 471 U.S. at 472, 105 S.Ct. at 2182 (quoting *Helicopteros*, 466 U.S. at 414, 104 S.Ct. at 1872)) (alterations in original; internal quotations omitted). The "key to exercising specific jurisdiction" is the "requirement that a nexus exist between a defendant's activities in the forum state and a plaintiff's cause of action." *Id.*

As discussed above, in *Williams I*, we concluded Arizona did not have general jurisdiction but held the facts of the case established specific jurisdiction. 195 Ariz. at 472-74, ¶¶ 11-21, 990 P.2d at 673-75. On review, our supreme court reversed on the specific jurisdiction issue. *Williams II*, 199 Ariz. 1, 4-5, ¶ 13, 13 P.3d 280, 283-84. The supreme court used a "but for" test to evaluate specific jurisdiction. Under this test, "a nexus exists [between the defendant and the forum state] if a plaintiff's injury would not have occurred but for a defendant's forum activities." *Id.* at 4, ¶ 12, 13 P.3d at 283. However, in Williams II, the plaintiffs

> d[id] not assert that their visit to the casino resulted from any of [the casino's] contacts with Arizona. They did not visit the casino after seeing or in response to an advertisement, and they never traveled to Nevada on a tour bus. Their injuries did not arise out of or relate to [the casino's] employment relationship with or hotel service to Arizona residents.

Id. at 4, ¶ 13, 13 P.3d at 283. Plaintiffs' "failure to show any causal connection between [the casino's] Arizona activity and their claim [wa]s fatal to the plaintiffs' argument" and, thus, Arizona did not have specific jurisdiction over the Nevada casino. Id. at 4-5, ¶ 13,13 P.2d at 283-84.

Here, Brackney testified in his deposition that he was familiar with Riverside Casino's advertising because it was "pretty much everywhere, everywhere you go." though he had visited Riverside Casino before, Brackney was not a member of Riverside Casino's promotional club at the time of the visit to the Riverside Casino. Brackney testified he had often parked his car in the Arizona parking lot and had often used the boat shuttle from the Arizona parking lot to Riverside Casino. However, on the evening of February 20, 2003, Brackney had visited the Riverside Casino because there was "[n]othing going on where we were at" and Riverside Casino's "Loser's Lounge" was the first casino past the bridge leading from Bullhead City, Arizona to Laughlin, Nevada.

Although Brackney was familiar with Riverside Casino, there is no evidence in the record showing Riverside Casino's actions in Arizona caused any of Brackney's actions on the night of the accident.

Instead, Brackney's deposition shows he went to Riverside Casino only because it was convenient. Plaintiffs have not shown Brackney would not have gone to Riverside Casino on February 20, 2003, "but for" Riverside Casino's activity in Arizona. Because Plaintiffs have not shown a "causal connection" between Riverside Casino's activity in Arizona and Brackney's actions that caused the Plaintiffs' claims and injuries, Arizona does not have specific jurisdiction over Riverside Casino. *See Williams II*, 199 Ariz. at 4-5, ¶ 13, 13 P.3d at 283-84.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the superior court dismissing Plaintiff's complaint against Riverside Casino for lack of personal jurisdiction.

ONCURRING: ANN A. SCOTT TIMMER, Presiding Judge and MICHAEL J. BROWN, Judge.

APPENDIX B

[Seal SUPREME COURT
STATE OF ARIZONA]

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October 29, 2008

RE: SANDY LATIMER et al v. LAUGHLIN/RIVERSIDE RESORT
Arizona Supreme Court
No. CV-08-0259-PR
Court of Appeals Division One
No. 1 CA-CV 07-0417
Mohave County Superior Court
No. CV 2004-7025

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on October 28, 2008, in regard to the above-referenced cause:

ORDERED: Petition for Review (Oral Argument Requested) = DENIED.

Record returned to the Court of Appeals, Division One, Phoenix, this 29th day of October, 2008.

Rachelle M. Resnick, Clerk

TO:
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